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**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK**

DAILY NEWS CHARITIES, INC.,)	
)	Civil Action No.: 17-CV-08733 (VEC)
Plaintiff,)	
)	<u>AFFIRMATION IN OPPOSITION</u>
-against-)	
)	
USA BOXING METROPOLITAN)	
ASSOCIATION,)	
)	
Defendant.)	

Johnnie Woluewich, Esq., an attorney who is duly admitted to practice law in the United States District Court, Southern District of New York, states the following under penalty of perjury:

1. I am an attorney who is assisting defendant, USA Boxing Metropolitan Association (“USA”), on a *pro-bono* basis, in the instant action.
2. I respectfully offer the instant Affirmation in Opposition, in opposition to Plaintiff, Daily News Charities, Inc.’s (“DNC”), Order to Show Cause (“OTSC”) and application for a Temporary Restraining Order (“TRO”).

3. I respectfully submit that, in light of the fact that I am handling this matter *pro-bono*, the time-limitations imposed by this Honorable Court, as well as the volunteers' holiday schedules and travel plans, USA's access to certain documents and affidavits is limited at this time. Notwithstanding the same, USA shall engender in good-faith to replace and supplement the documents annexed hereto immediately upon our receipt of the same and shall duly serve them upon DNC.

4. I base the instant Affirmation in Opposition upon my review of the pleadings herein, conversations had with my client, as well as my independent investigation of the facts and circumstances underlying the instant action.

5. Moreover, I respectfully submit that I have substantial first-hand knowledge of the instant action, the parties' history together, the New York City Golden Gloves tournament and the specific events that have lead to DNC's filing of its OTSC and TRO.

6. My family and I have been involved in amateur boxing for nearly Thirty (30) years.

7. For the first-half of his life, my father, Johnnie Woluewich, Sr., led an unfortunate life of crime and suffered from terrible addictions to narcotics.

8. In or about 1990, upon his release from prison, my father began volunteering with USA and his life was forever changed.

9. Specifically, once my father began volunteering with USA, he never committed a single crime again, never touched any narcotics again and, even after subsequently losing both of his legs to diabetes, he found the strength and inspiration to never give up and dedicated the last years of his life to service – eventually becoming the President of USA.

10. In fact:

- a. One of the Three (3) major annual awards that are presented to New York City Golden Gloves athletes is called the “Johnnie Woluwich Award for Academic and Athletic Excellence” (A photograph from the 2013 “Daily News Golden Gloves” finals is annexed hereto as “Exhibit A”); and
- b. The book “Cradle of Champions: 80 Years of New York Daily News Golden Gloves”, which is cited by DNC throughout their OTSC and TRO (eg. DNC’s Memorandum of Law – Page 7), has a half-page dedicated to my father. (A photograph of Page 173 of the “Cradle of Champions: 80 Years of New York Daily News Golden Gloves” book is also annexed hereto as “Exhibit A”).

11. Finally, my father’s fiancé, Deni Auclair, who I lovingly refer to as my step-mother, is the volunteer treasurer of USA, as well as an administrator, duly appointed by Golden Gloved of America (i.e. the registered owner of the “Golden Gloves” trademark), to operate the licensed Golden Gloves tournament in New York City. (A copy of Golden Gloves of America’s trademark is annexed hereto as Exhibit B”)

**THE NEW YORK CITY GOLDEN GLOVES TOURNAMENT
IS A COMMUNITY SERVICE - NOT AN ASSET.**

12. The New York City Golden Gloves Tournament is an annual event that is organized, managed and run by multiple volunteers and various chartable organizations.

- a. Pursuant to New York State General Business Law (“GBL”) Article 41, §1007, no individual or entity shall be permitted to organize amateurs boxing events in New York State without first obtaining a license from the New York State Athletic Commissions. (A copy of GBL, Article 41, is annexed hereto as “Exhibit C”).
- b. Pursuant to GBL 41, §1021, the New York State Athletic Commissions has expressly granted USA Amateur Boxing Federation (“ABF”) a limited exception to §1007, Upon information and belief, ABF is a 501(c) entity, which is located in Colorado **and is not a party to the instant action.** (See “Exhibit C”)
- c. USA is a local affiliate of ABF, serving at the pleasure and direction of ABF and is wholly comprised of volunteers.
- d. Golden Gloves of America is the registered owner of the Golden Gloves trademark. (see “Exhibit B”)
- e. Golden Gloves of America issues *gratis* licenses to 32 local affiliates of ABF, which thereby permit such local affiliates to use the Golden Gloves trademark in conjunction with their local tournaments. Said licenses are referred to as “Franchise Agreements”

- f. Golden Gloves of America has issued such a license to USA, by way of a Franchise Agreement administrated by USA's treasurer Deni Auclair. (A copy of an email from DNC memorializing the Franchise Agreement is annexed hereto as Exhibit D").¹
- g. USA's volunteers seek sponsorships to off-set the costs of USA's production of the New York City Golden Gloves tournament.
- h. At most times herein, DNC has been the **title sponsor** of the same (i.e. the "Daily News Golden Gloves"). (See Declaration of Marci Swerten "Exhibit G" and "Exhibit H" – "DNC as sponsor of the Daily News Golden Gloves Tournament")
- i. Other sponsors have included Nobody Beats the Wiz, P.C. Richards and Sons, Everlast, MCU, and the Elks Lodge. (See Declaration of Brian Adams "Exhibit A").
- j. With the authorities granted to them by the New York State Athletic Commission exception, the Golden Gloves of America Franchise Agreement, the sanction provided by ABF, USA's own funds, as well as the sponsorship revenues received from sponsors, such as DNC, USA lawfully organizes and produces the New York City Golden Gloves tournament each year.

¹ Your Deponent has contacted all parties to the subject Franchise Agreement and is actively seeking permission to serve the same upon DNC.

BACKGROUND

13. For many years, USA and DNC have cooperated with one another and have served the New York City community by organizing, executing and sponsoring the New York City Golden Gloves tournament.

14. Upon information and belief, in or about September 2017, the Daily News, which was on the verge of a total economic collapse, was sold to Tronc, a national publishing conglomerate, for Zero (\$0) dollars. (A copy of a September 4, 2017 New York Times article regarding the same is annexed hereto as “Exhibit E”)

15. In the years leading up to the aforementioned sale, DNC, who upon information and belief, was, and still is, funded by the Daily News was unable to meet many of its financial commitments (including, without limitation to USA).

16. As a result of the same, the New York City Golden Gloves tournament was damaged and the young men and women served by the tournament were injured.

17. For example, one of the hallmarks of the New York City Golden Gloves, was the selection of Madison Square Garden as the venue of its Two (2) day finals (typically occurring on Thursday and Friday nights).

18. Over the last few years, DNC, as the title sponsor of the New York City Golden Gloves tournament, has been unable to secure Madison Square Garden and the finals have therefore been moved to multiple much-less-noteworthy venues and have even taken place during the day time (which has caused attendance and press-coverage to decline significantly).

19. Upon information and belief, despite the same, DNC placed a hold on Madison Square Garden for April 2018 after finding out that ABF was attempting to book those same dates.

20. Moreover, upon information and belief, following USA's and ABF's receipt of several sexual misconduct and other civil rights complaints regarding Brian Adams, a former DNC employee who supervises DNC's sponsorship of the New York City Golden Gloves tournament, ABF and USA (at ABF's direction) were unable to permit him unfettered access to the tournament (which, would include his access to the women's locker-rooms, etc.)².

21. I have been informed that Mr. Adams has not renewed his membership with ABF for many years as the result of his apparent inability to pass a background check.

22. Despite the above, and based on USA's long-time relationship with DNC, USA has once again offered DNC an opportunity to renew its title sponsorship of the New York City Golden Gloves Tournament. (See Declaration of Marci Swerten "Exhibit B").

23. However, as this Honorable Court is aware, DNC's new ownership views the New York City Golden Gloves tournament as its asset and is therefore unwilling to take the steps required by ABF to protect ABF's amateur athletes.

24. As a result thereof, DNC has initiated the instant action in an attempt to circumvent both New York State law and ABF's rules.

² Upon information and belief, following DNC's settlement of a sexual misconduct complaint made against Brian Adams by (REDACTED), Mr. Adams was fired from his salaried position with DNC, and thereafter re-hired by DNC, as a contractor, to oversee its sponsorship of the New York City Golden Gloves tournament. It is also noted that, in 2016, Mr. Adams's unlawful actions caused a female athlete named Elise Aubespain to file a civil rights based complaint to be filed against USA and Deni Auclair (as the administrator of the Franchise Agreement with Golden Gloves of America).

THIS HONORABLE COURT SHOULD DENY DNC APPLICATION

**ISSUE ONE - DNC DOES NOT MAINTAIN A STRONG CLAIM TO
THE INTELLECTUAL PROPERTY RIGHTS IT ASSERTS**

25. As regards DNC's OTSC and TRO, it is respectfully submitted that they both substantially rely on a gross misstatement of fact.

26. Quite succinctly, DNC's position that it maintains common law rights in the Golden Gloves mark is based upon its misguided and false assertion that, beginning on March 28, 1927, "DNC has continuously use and maintained the Golden Gloves mark in the the New York City Metropolitan Area" (See Declaration of Brian Adams ¶5 and Memorandum of Law Page 3).

27. In 1991, while the Daily News newspaper was on strike, DNC and its owner corporation, the Chicago Tribune (which was not on strike), chose not to sponsor the New York City Golden Gloves.

28. In light of DNC's registration of the Golden Gloves Service Mark at that time, DNC was unwilling to recognize USA's, ABF's and/or Golden Gloves of America's authority to organize and produce the New York City Golden Gloves tournament that year. (A copy of a Chicago Tribune article memorializing the same is annexed hereto as Exhibit "F")

29. Notwithstanding the same, and as further memorialized in the annexed Chicago Tribune article, DNC's position was incorrect - as USA was a licensed franchisee of Golden Gloves of America. (See "Exhibit D" and "Exhibit "F").

30. As such, in 1991, without DNC's sponsorship or permission, ABF and USA's predecessor organized and produced the "New York Metropolitan ABF Golden Gloves" tournament. (A copy of a April 4, 1991 New York Newsday article "Gloves Still Swinging Without Major Sponsorship" and two signed letters from participants in the 1991 "New York

Metropolitan ABF Golden Gloves” tournament are collectively annexed hereto as “Exhibit “G”).

31. Despite DNC’s explicit notice of the 1991 “New York Metropolitan ABF Golden Gloves” tournament, it not only failed to prosecute ABF, USA’s predecessor and/or Golden Gloves of America, for any alleged infringement(s) in conjunction with the same, it also, within only a few years, allowed their service mark to expire.

32. It is noted that, since 1998 and through their filing of the instant action, DNC has done absolutely **nothing** to restore their mark, nor have they, in any way, shape or form prosecuted any intellectual property claims in conjunction with the Golden Gloves mark.

33. In fact, while DNC’s 1981 agreement with USA’s predecessor explicitly notes their service mark (*See Declaration of Marci Swerten* “Exhibit G” – Page 1), every single agreement that it has executed with USA since 1998 has failed to identify **any** of its purported intellectual property rights, and instead clearly identifies DNC as a “sponsor.” (*See Declaration of Marci Swerten* “Exhibit H” – Page 1).

34. Based upon the foregoing, it is respectfully submitted that DNC has failed to protect its purported mark, failed to prevent USA, ABF or Golden Gloves of America from using its purported mark (in New York City and Nationwide) and has never raised any objections regarding USA’s use of the Golden Gloves mark by way of the express permission granted to USA by Golden Gloves of America.

35. Accordingly, DNC cannot establish a likelihood of success on the merits and its application must be denied.

**ISSUE TWO - DNC HAS FAILED TO INCLUDE
NECESSARY PARTIES IN THE INSTANT ACTION**

36. As aforementioned, USA serves at the express permission and direction of ABF and pursuant to ABF's rules.

37. Quite succinctly, the relief requested by DNC cannot be obtained by, or against, USA, as USA's volunteers receive their instructions directly from ABF's rules, officers and management.

38. As is memorialized in the DNC/USA agreements, and as will be further demonstrated below, DNC is explicitly aware of the ABF/USA relationship. (*See Declaration of Marci Swerten* "Exhibit H").

39. Further, DNC is explicitly aware that USA uses the "disputed" Golden Gloves mark pursuant to the express permission it receives from Golden Gloves of America.

40. Despite the above, DNC has failed to name either entity as a defendant herein.

41. Pursuant to my conversations with DNC's lawyer Patricia Schlegel, DNC intentionally failed to include said entities because of its fear that said entities would use their budgets and influence to diminish DNC's chances of winning the instant action.

**ISSUE THREE – DNC’S PURPORTED TOURNAMENT IS ILLEGAL AND
THEREFORE DNC CAN NOT SUFFER IRREPARABLE HARM**

42. As aforementioned, pursuant to GBL Article 41, DNC cannot organize a boxing tournament in New York State without first obtaining: (i) a license from the New York State Athletic Commission, or (ii) a sanction from ABF.

43. To wit, upon information and belief, DNC **has not** obtained a license from the New York State Athletic Commission.

44. I have been recently informed that the New York State Athletic Commission is not inclined to issue DNC a license for as multitude of reasons, including without limitation, their inexperience organizing a tournament, apparent inability to secure the required insurance and otherwise protect amateur athletes.

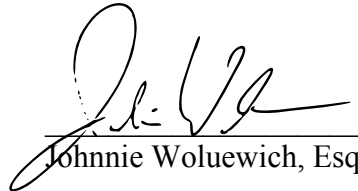
45. Moreover, both DNC and myself have been informed that ABF is also not inclined to issue DNC a sanction, nor withdraw any sanctions that have already been issues to USA for the 2018 “New York Metropolitan Golden Gloves” tournament. (Copies of ABF’s correspondence to USA and DNC are collectively annexed hereto as Exhibit “H”)

46. Perhaps most troubling, ABF has advised DNC that any amateur athletes who are fooled into partaking in DNC's purported tournament will forgo their amateur status and, therefore, will be ineligible for the Olympics, future amateur competition or even advancing to the National Golden Gloves tournament.

47. Quite succinctly, should DNC prevail herein, the only persons who will be irreparably harmed will be the young men and women who gave up thousands of hours of their respective lives to train as amateur boxers - only to find that they are now completely and wholly ineligible for, and disqualified from, any further amateur or college competition (which would preclude all college scholarships).

WHEREFORE, for the forgoing reasons, it is respectfully submitted to this Honorable Court that DNC's applications should be denied at this time.

Dated: December 15, 2017
Bronx, New York



Johnnie Woluewich, Esq.